

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KEITH FORTH, et al.,

Plaintiffs,

Case No. 1:08-cv-368

v

HON. JANET T. NEFF

MARY BERGHUIS, et al.,

Defendants.

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**JUDGMENT**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On May 1, 2008, the Magistrate Judge filed a Report and Recommendation, recommending that the action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915A(b) on grounds that the complaint failed to state a claim. The matter is presently before the Court on Plaintiffs' objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Judgment. See FED. R. CIV. P. 58.

Plaintiffs argue that the Magistrate Judge erred in his decision that they failed to state a claim because his decision is against legal precedent; requires a heightened standard for Plaintiffs to prove that the MDOC violated their Eighth Amendment rights; and incorrectly states that Defendants' imperfect enforcement of the smoking policy is excused. Plaintiffs' arguments are without merit.

The Magistrate Judge did not ignore precedent in making his determination that Plaintiffs failed to state a claim. Plaintiffs' objection is misplaced. Cases that are factually distinguishable, particularly with regard to sufficient proof of serious medical conditions, require independent legal analysis.

Further, the Magistrate Judge did not require a heightened standard for Plaintiffs to prove violation of their Eighth Amendment rights; rather, he applied the seminal United States Supreme Court case of *Helling v. McKinney*, 509 U.S. 25 (1993), which requires that prisoners prove both subjective and objective elements regarding Eighth Amendment violations. With regard to the subjective component, the Magistrate Judge correctly determined that Plaintiffs did not show that Defendants were deliberately indifferent to Plaintiffs' Eighth Amendment rights despite the imperfect enforcement of the MDOC non-smoking policy.

For these reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. See *McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

**THEREFORE, IT IS ORDERED** that the objections (Dkt 3) are DENIED and the Report and Recommendation (Dkt 2) is APPROVED and ADOPTED as the opinion of the Court.

**IT IS FURTHER ORDERED** that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915A(b) for the reasons stated in the Report and Recommendation.

**IT IS FURTHER ORDERED** that the Court certifies pursuant to 28 U.S.C § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Date: October 14, 2008

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge